

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: April 19, 2006

Division: Growth Management

Bulk Item: Yes X No _____

Department: Planning

Staff Contact Person: Jose Papa

AGENDA ITEM WORDING:

Approval of a 3-party contract with Otak Group Inc. and the State of Florida Department of Environmental Protection, Office of Greenways and Trails to perform construction services for safety upgrades at Stock Island, Big Coppitt Key and Big Pine Key on the Florida Keys Overseas Heritage Trail.

ITEM BACKGROUND:

The Florida Keys Overseas Heritage Trail (FKOHT) is a multi-purpose recreational trail designed to stretch from Key Largo to Key West. Part of the project is to provide safety upgrades on substandard sections of the Overseas Heritage Trail to accommodate a new bike path. As part of Monroe County's commitment to the project, the BOCC allocated funding to complete various phases of the project.

PREVIOUS RELEVANT BOCC ACTION:

May 18, 2000-Resolution 205-2000-A Resolution to allow the FDEP to design, build, and maintain the Florida Keys Overseas Heritage Trail.

February 21, 2001-Resolution No. 84-2001- A resolution transferring \$527,974.55 from Roadway Impact Fees as a 50/50 fund match for CIGP funds to be used for safety upgrades on the Overseas Heritage Trail.

CONTRACT/AGREEMENT CHANGES:

N/A

STAFF RECOMMENDATION:

Approval.

TOTAL COST: \$664,170

BUDGETED: Yes X No _____

COST TO COUNTY: \$332,085

SOURCE OF FUNDS: FDOT Contract AL-146
125-50511-530490-GW0205

REVENUE PRODUCING: Yes ___ No X

AMOUNT PER MONTH ___ **Year** ___

APPROVED BY: County Atty X OMB/Purchasing X Risk Management X

DIVISION DIRECTOR APPROVAL:



Ronda Norman

DOCUMENTATION: Included X

Not Required _____

DISPOSITION: _____

AGENDA ITEM # _____

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Office of Greenways and Trails Contract #
Otak Group Inc. Effective Date:
Expiration Date:
Contract Purpose/Description:

Three party contract between Monroe County, DEP-Office of Greenways and Trails, and Otak Group Inc. to perform construction services for safety upgrades at Stock Island, Big Coppitt Key, and Big Pine Key on the Florida Keys Overseas Heritage Trail.

Contract Manager: Jose Papa 2514 Planning and
Environmental
Resources
(Name) (Ext.) (Department/Stop #)

for BOCC meeting on April 19, 2006 Agenda Deadline: April. 4, 2006

CONTRACT COSTS

Total Dollar Value of Contract: \$ 664,170 Current Year Portion: \$ 664,170
Budgeted? Yes ☒ No ☐ Account Codes:
Grant: \$ 332,085 125-50511-530490-GW0205
County Match: \$ 0 - - - - -
- - - - -

ADDITIONAL COSTS

Estimated Ongoing Costs: \$0/yr For:
(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u> </u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u> </u>	<u> </u>
Risk Management	<u> </u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u> </u>	<u> </u>
O.M.B./Purchasing	<u> </u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u> </u>	<u> </u>
County Attorney	<u> </u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u> </u>	<u> </u>
Comments:				

CONTRACT

THIS CONTRACT (the "Contract") is entered into between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, OFFICE OF GREENWAYS AND TRAILS, whose address is 3900 Commonwealth Boulevard, MS #795, Tallahassee, Florida 32399-3000 (hereinafter referred to as the "Department"), MONROE COUNTY, FLORIDA, c/o Monroe County Growth Management Division, 2798 Overseas Highway, Suite 410, Marathon, Florida 33050 (hereinafter referred to as the "County") and OTAK GROUP, INC., a Florida corporation, whose address is 85663 Avant Road, Yulee, Florida 32097 (hereinafter referred to as the "Contractor").

In consideration of the mutual benefits to be derived herefrom, the Department, the County and Contractor do hereby agree as follows:

1. A. The Department and the County do hereby retain the Contractor to perform construction services for the proper execution and completion of the trail safety improvements on that portion of the Florida Keys Overseas Heritage Trail located on Stock Island, Big Coppitt Key and Big Pine Key (the "project"). The Contractor does hereby agree to perform such work upon the terms and conditions set forth in this Contract, Attachment A, Attachment B, all attachments and exhibits named herein, Bid No. BD&C 13-05/06, all addenda and the completed bid form which are all incorporated by reference as part of this Contract.

B. In the event of conflict in the provisions of said contract documents named above, the provisions of this Contract shall control over the General Conditions of the Contract for Construction AIA Document A-201, 1997 Edition, (hereinafter referred to as AIA Document A-201).
2. The Contractor shall perform the services in a proper and satisfactory manner as determined by the Department. Any and all equipment, products, labor and materials necessary to perform this Contract shall be supplied by the Contractor, unless otherwise specified herein.
3. The Contractor shall perform as an independent contractor and not as an agent, representative, or employee of the Department or the County.
4. A. As consideration for the services rendered by the Contractor under the terms of this Contract the County shall pay the Contractor on a lump sum basis as specified in Attachment A. Request for payment must be in a form satisfactory to the County Clerk (the "Clerk"). The request must describe in detail the services performed and the payment amount requested. The consultant as specified in Attachment A (the "Consultant") must submit request for payment and progress reports to the Department's project manager, who reviews the request, shall note their approval on the request and forward it to the Clerk for payment. If request for payment is not approved, the Department's project manager must inform the Consultant in a writing that must include an explanation of the deficiency that caused the disapproval of the request. When the Clerk receives a request for payment, the Clerk shall pay the request in the amount approved by the Department's project manager pursuant to Chapter 218, Part VII, Florida Statutes, the Local Government Prompt Payment Act.

B. Contractor acknowledges and agrees that the Department shall not be responsible for payment of the Contract Sum as specified in Attachment A ("Contract Sum"). Contractor acknowledges that the County is solely responsible for payment of the Contract Sum and shall hold harmless the Department against any liability, claims, judgments or cost of whatsoever kind and nature related to the Contract Sum.

5. This Contract shall begin upon execution and end 12 months after final completion. During this 12 month period after final completion, the Contractor shall repair or replace any defective materials or workmanship free of charge to the Department and the County. Work shall not begin before the date established in the Notice to Proceed. In accordance with Section 287.058(2), Florida Statutes, the Contractor shall not be eligible for reimbursement for services rendered (such as labor for preparation and execution of the bid or travel necessitated by the bid process) prior to the execution date of this Contract.
6. MONROE COUNTY'S PERFORMANCE AND OBLIGATION TO PAY UNDER THIS CONTRACT IS CONTINGENT UPON AN ANNUAL APPROPRIATION BY THE COUNTY COMMISSION.
7. Pursuant to Section 215.422, Florida Statutes, the Department's Project Manager shall have five (5) working days, unless otherwise specified herein, to inspect and approve the services for payment. After inspection, the Department shall submit a request for payment to the County. Invoices which have to be returned to the Contractor for correction(s) will result in a delay in the payment to the Contractor.
8. The Contractor shall indemnify, protect, defend, save and hold harmless the State of Florida, the Department and the County against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to, or death of any person or persons and for the loss or damage to any property resulting from the use, service, operation or performance of work under the terms of this Contract, resulting from the negligent acts of the Contractor, his subcontractor, or any of the employees, agents or representatives of the Contractor or subcontractor.
9.
 - A. The Department or the County may terminate this Contract at any time in the event of the failure of the Contractor to fulfill any of its obligations under this Contract. Prior to termination, the Department or the County shall provide ten (10) calendar days written notice of its intent to terminate and shall provide the Contractor an opportunity to meet with the Department or the County regarding the reason(s) for termination within thirty (30) days. If the meeting does not result in agreement or the Contractor fails to request such meetings, the Contract will be considered terminated the day after the meeting was scheduled.
 - B. The Department or the County may terminate this Contract without cause and for its convenience by giving thirty (30) calendar days written notice to the Contractor. When notified of such termination, Contractor shall present all final invoices for all work performed on the project that is authorized by this Contract within thirty (30) days of receipt of such notice. Any invoice not timely or properly submitted shall not be paid.
 - C. In the event of early termination by the Department or the County, the County shall evaluate the degree of project completion which can be achieved through only the County's contractual responsibility for funding and the County's ability to provide the inspection services committed herein by the Department. Should County determine that continuation of this Contract between the two remaining parties is not in the best interests of the public, the County may, after providing the Contractor with ten (10) days proper written notice terminate its obligations under this Contract. When notified of such termination, Contractor shall present all final invoices for all work performed on the project that is authorized by this Contract within thirty (30) days of receipt of such notice. Any invoice not timely or properly submitted shall not be paid. In no event shall the County make payment for any work performed after the effective termination date.
 - D. The County may terminate this Contract at any time in the event of the failure of the Department to fulfill any of its obligations under this Contract. Prior to termination, the County shall provide ten (10) calendar days written notice of its intent to terminate and shall provide the Department an opportunity to meet with the County regarding the reason(s) for termination within thirty (30) days after receiving notice of County's intent to terminate this Contract. If the meeting does not result in agreement or if the Department fails to request a meeting, this Contract will be considered

terminated the day after this meeting was scheduled. When notified of such termination, Contractor shall present all final invoices for all work performed on the project that is authorized by this Contract within thirty (30) days of receipt of such notice. Any invoice not timely or properly submitted shall not be paid. In no event shall the County make payment for any work performed after the effective termination date.

- E. The Department or the County may terminate this Contract because of the failure of the other party to perform its obligations under this Contract. If the County terminates this Contract because of the Department's failure to perform, then the County must pay the Department the amount due for all work satisfactorily completed as determined by the County up to the date of the Department's failure to perform by minus any damages the County suffered as a result of the Department's failure to perform. The damage amount must be reduced by the amount saved by the County as a result of the Contract termination. When notified of such termination, Contractor shall present all final invoices for all work performed on the project that is authorized by this Contract within thirty (30) days of receipt of such notice. Any invoice not timely or properly submitted shall not be paid. In no event shall the County make payment for any work performed after the effective termination date.
- F. Notice shall be sufficient if delivered personally or by certified mail to the address set forth in paragraph 10.
10. Any an all notices shall be hand delivered or sent by certified mail return receipt requested to the parties at the following addresses:

Contractor

Aaron T.Kato., President
OTAK Group, Inc.
85663 Avant Road
Yulee, Florida 32097

Department

Michael Renard, Contract Manager
State of Florida
Department of Environmental Protection
hand delivery to:
Alfred B. Maclay Gardens State Park
3540 Thomasville Road
Thomasville Road, Building B-1
Tallahassee, Florida 32309

or by mail to:
3900 Commonwealth Boulevard
MS# 520
Tallahassee, Florida 32399-3000

AND

Randy Smith, Project Manager
Office of Greenways and Trails
Department of Environmental Protection
3900 Commonwealth Boulevard
MS#795
Tallahassee, Florida 32399-3000

AND

Jose Papa, AICP
Bicycle-Pedestrian Planning Coordinator
Monroe County Planning Department
2798 Overseas Highway, Suite #410
Marathon, Florida 33050

AND

Suzanne Hutton, Esq.
County Attorney, Monroe County
P.O. Box 1026
Key West, Florida 33041

Any change in address shall be provided by the changing party within ten (10) days after the change.

11. This Contract may be unilaterally canceled by the Department or the County for refusal by the Contractor to allow reasonable public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with this Contract, unless the records are exempt from Section 24(a) of Article I of the Florida Constitution and Section 119.07(1), Florida Statutes.
12. The Contractor shall maintain books, records and documents directly pertinent to performance under this Contract in accordance with generally accepted accounting principles, consistently applied. The Department, the State of Florida, the County, or their authorized representatives shall have access to such records for audit purposes during the term of this Contract and for five years following Contract completion or if there is a pending claim, dispute, or litigation, for three years following final determination of such matter. In the event any work is subcontracted, the Contractor shall similarly require each subcontractor to maintain and allow access to such records for audit purposes for the same time period.
13. The Department's project manager is Randy Smith (telephone number 850-245-2989) or his successor. The Contractor's project manager is Aaron Kato, (telephone number 904-225-2588) or his successor. All matters shall be directed to the project managers for appropriate action or disposition.
14.
 - A. The Contractor covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.
 - B. No member, officer or employee of the Contractor or the locality during his tenure, or for two years thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof. The Contractor shall be responsible for including this provision in all subcontracts issued as a result of this Contract.
15. This Contract has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract. Any action hereon or in connection herewith shall be brought in Leon County, Florida.
16. No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by either party under this Contract shall impair any such right, power or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.
17. The Contractor recognizes that the State of Florida and the County, by virtue of sovereignty, are not required to pay any taxes on the services or goods purchased under the terms of this Contract.
18. This Contract is neither intended nor shall it be construed to grant any rights, privileges or interest in any third party without the mutual written agreement of the parties hereto.
19. With regard to the Department: No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Contract. The Contractor also agrees to comply with the following non-discrimination requirements:
 - A. Title VI of the Civil Rights Act of 1964 (42 USC SS 2000d et seq.) and the regulations of the Federal Department of Transportation issued hereunder, which prohibit discrimination on the

grounds of race, color or national origin under programs or activities receiving Federal financial assistance; and,

- B. The Americans with Disabilities Act of 1990 (42 USC SS 12101 et seq.) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide transportation.

With regard to the County: Contractor agrees that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Contract automatically terminates without any further action on the part of any party, effective the date of the court order. Contractor agrees to comply with all federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color, or national origin; 2) Title IX of the Education Amendment of 1972 as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973 as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107), which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912 ss. 523 and 527 (42 USC ss. 690dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et. Seq.) as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Ch. 13, Art. VI prohibiting discrimination on the basis of race, color, sex, Religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any federal or state statutes which may apply to the parties to, or the subject matter of, this Contract.

- 20. The Contractor agrees to ensure that Disadvantaged Business Enterprises as defined in applicable federal and state regulations, have the opportunity to participate in the performance of this Contract. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform subcontracts.
- 21. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity. The State of Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and intends to post the list on its website. Questions regarding the discriminatory vendor list may be directed to the State of Florida Department of Management Services, Office of Supplier Diversity at telephone number (850) 487-0915.
- 22. This Contract is an exclusive contract for services and may not be assigned in whole or in part without the prior written approval of the Department and the County.
- 23. A. The Contractor shall not subcontract, assign, or transfer any work under this Contract without the prior written consent of the Department's contract manager. The Contractor agrees to be responsible for the fulfillment of all work elements included in any subcontract consented to by the Department and agrees to be responsible for the payment of all monies due under any subcontract.

It is understood and agreed by the Contractor that the Department and the County shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and that the Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

- B. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Contract embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. The Department will be glad to furnish a list of minority owned businesses for consideration in subcontracting opportunities.
24. It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this Contract shall be purchased from the corporation identified under Chapter 946, Florida Statutes, if available, in the same manner and under the same procedures set forth in Section 946.515(2) and (4), Florida Statutes; and for purposes of this Contract the person, firm or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for this agency insofar as dealings with such corporation are concerned.

The "corporation identified" is Prison Rehabilitative Industries and Diversified Enterprises, Inc. (P.R.I.D.E.) which may be contacted at:

P.R.I.D.E.
12425 28th Street North
St. Petersburg, Florida 33716-1826
Telephone: 1-800-643-8459
Website: www.pridefl.com

25. It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this Contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this Contract the person, firm, or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for the state agency insofar as dealing with such qualified nonprofit agency are concerned.

The "nonprofit agency" identified is RESPECT of Florida which may be contacted at:

RESPECT of Florida
2475 Apalachee Parkway, Suite 205
Tallahassee, Florida 32301-4946
(850) 487-1471
Website: www.respectofflorida.org

26. A. To the extent required by law, the Contractor will be self-insured against, or will secure and maintain during the life of this Contract, workers' compensation insurance for all of his employees connected with the work of this project and, in case any work is subcontracted, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. Such self-insurance program or insurance coverage shall comply fully with the Florida workers' compensation law. In case any class of employees engaged in hazardous work under this Contract is not protected under workers' compensation statutes, the Contractor shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of his employees not otherwise protected.

- B. Prior to the commencement of work governed by this Contract, the Contractor shall obtain Workers' Compensation Insurance with limits sufficient to respond to the applicable state statutes.
- C. In addition, the Contractor shall obtain Employers' Liability Insurance with limits of not less than:
- \$500,000 Bodily Injury by Accident
 - \$500,000 Bodily Injury by Disease, policy limits
 - \$500,000 Bodily Injury by Disease, each employee
27. A. The Contractor shall secure and maintain commercial general liability insurance including bodily injury, property damage, personal and advertising injury, and products and completed operations. This insurance will provide coverage for all claims that may arise from the services and/or operations completed under this Contract, whether such services and/or operations are by the Contractor or anyone directly or indirectly employed by the Contractor. Such insurance shall include a hold harmless provision in favor of the State of Florida, the Department, the Board of Trustees of the Internal Improvement Trust Fund and the County and also include the State of Florida, the Department, the Board of Trustees of the Internal Improvement Trust Fund and the County as additional named insureds for the entire term of this Contract. The minimum limits of liability shall be \$1,000,000.00 for each occurrence and \$2,000,000.00 in the aggregate.
- B. The Contractor shall secure and maintain commercial automobile liability insurance for all claims which may arise from the services and /or operations under this Contract, whether such services and/or operations are by the Contractor or by anyone directly, or indirectly employed by him. The minimum limits of liability shall be as follows:
- \$1,000,000.00 automobile liability combined single limit for company owned vehicles, if applicable
 - \$1,000,000.00 hired and non-owned liability coverage
- C. The County shall be named as additional insured on all policies issued to satisfy insurance requirements.
- D. The Contractor shall secure and maintain, if applicable, during the life of this Contract a "Builders Risk Policy," All Risks Form issued on a completed value basis. Installation floaters and other inland marine forms may be utilized where applicable when they are in the best interest of the State of Florida.
- E. All insurance policies shall be insurers licensed or eligible to do business in the State of Florida. The Contractor's current certificate of insurance shall contain a provision that the insurance will not be cancelled for any reason except after thirty (30) days written notice to the Department's Contract Administrator, Bureau of General Services, Procurement Section, State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, MS#93, Tallahassee, Florida 32399-3000 and to Monroe County Department of Risk Management, 1100 Simonton Street, Key West, Florida 33040.
28. The Department may at any time, by written order designated to be a change order, make any change in the work within the general scope of this Contract (e.g., specifications, time, method or manner of performance, requirements, etc.). All change orders are subject to the mutual agreement of both parties as evidenced in writing. Any change order which causes an increase or decrease in the Contractor's cost or time shall require a formal amendment to this Contract.
29. No member or delegate to the Congress of the United States shall be admitted to any share or part of the Contract or any benefit arising therefrom.

30. The employment of unauthorized aliens by the Contractor/vendor is considered a violation of 8 U.S.C. § 1324a. If the Contractor/vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract. The Contractor shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Contract.
31. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not perform work as a grantee, contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two, for a period of 36 months from the date of being placed on the convicted vendor list. If the Contractor is placed on said list, after this Contract is executed, the Department may terminate the Contract in accordance with Section 287.133, Florida Statutes, and paragraph 10 of this Contract.
32. A. If the Contractor brings to the performance of this Contract a pre-existing patent or copyright, the Contractor shall retain all rights and entitlements to that pre-existing patent or copyright. Otherwise, it is expressly agreed that the work performed under this Contract is a work for hire.
- B. If any discovery or invention arises or is developed in the course of, or as a result of, work or services performed under this Contract, or in any way connected herewith, the Contractor shall refer the discovery or invention to the Department's Contract Manager for a determination whether patent protection will be sought in the name of the State of Florida. Any and all patent rights accruing under or in connection with the performance of this Contract are hereby reserved to the State of Florida. In the event that any books, manuals, films, or other copyrightable material are produced, the Contractor shall notify the Department. Any and all copyrights accruing under or in connection with the performance under this Contract are hereby reserved to the State of Florida. All materials to which the Department is to have patent rights or copyrights shall be marked and dated by the Contractor in such a manner as to preserve and protect the legal rights of the Department.
- C. Prior to the initiation of services under this Contract, the Contractor shall disclose, in writing, all intellectual properties relevant to the performance of this Contract which the Contractor knows or should know, could give rise to a patent or copyright. The Contractor shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists. The Department shall then, under paragraph B above, have the right to all patents and copyrights which arise as a result of performance under this Contract.
- D. The terms and conditions specified in paragraphs A, B, and C above shall also apply to any subcontract made under this Contract. The Contractor shall be responsible for informing the subcontractor of the provisions of this section and obtaining disclosures.
33. A. All rights and title to works for hire under this Contract, whether patentable or copyrightable or not, shall belong to the Department and shall be subject to the terms and conditions of this Contract.
- B. The computer programs, materials and other information furnished by the Department to the Contractor hereunder shall be and remain the sole and exclusive property of the Department, free from any claim or right of retention by or on behalf of the Contractor. The services and products listed in Attachment A shall become the property of the Department upon the Contractor's performance and delivery thereof. The Contractor hereby acknowledges that said computer programs, materials and other information provided by the Department to the Contractor hereunder, shall be and remain confidential and proprietary in nature to the extent provided by Chapter 119, Florida Statutes, and that the Contractor shall not disclose, publish or use same for any purpose other than the purposes provided in this Contract; provided, however, upon the Contractor first demonstrating to the Department's satisfaction that such information, in part or in whole, (1) was already known as the Contractor prior to its receipt from the Department; (2)

became known to the Contractor from a source other than the Department; or (3) has been disclosed by the Department to third parties without restriction, the Contractor shall be free to use and disclose same without restriction. Upon completion of the Contractor's performance or otherwise cancellation or termination of this Contract, the Contractor shall surrender and deliver to the Department, freely and voluntarily, all of the above-described information remaining in the Contractor's possession.

- C. The Contractor warrants that all materials produced hereunder will be of original development by the Contractor and will be specifically developed for the fulfillment of this Contract and will not knowingly infringe upon or violate any patent, copyright, trade secret or other property right of any third party, and the Contractor shall indemnify, protect, defend, save and hold the Department harmless from and against any loss, cost, liability or expense arising out of any breach or claimed breach of this warranty.
- 34. The Contractor shall comply with all applicable federal, state and local rules, regulations and ordinances in providing services to the Department under this Contract. The Contractor acknowledges that this requirement includes compliance with all applicable federal, state and local health and safety rules and regulations. The Contractor further agrees to include this provision in all subcontracts issued as a result of this Contract.
 - 35. Time is of the essence in performance of each and every term or condition of this Contract.
 - 36. The Contractor shall stop work and immediately notify the Department's project manager when archaeological material (human remains, bones, pottery, arrowheads, building foundations, etc.) are found during construction.
 - 37.
 - A. In accordance with Executive Order 12549, Debarment and Suspension (43 CFR 12), the Contractor shall agree and certify that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily from participation in this transaction by any Federal department or agency; and that the Contractor shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction, unless authorized in writing to the Department.
 - B. Upon execution of this Agreement by the Contractor, the Contractor shall complete, sign and return a copy of the form entitled "Certification Regarding Debarments, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Federally Funded Transactions", attached hereto and made a part hereof as Attachment B.
 - C. As required by paragraphs A and B above, the Contractor shall include the language of this section, and Attachment B in all subcontract or lower tier agreements executed to support the Contractor's work under this Contract.
 - 38. The Contractor certifies that no federal appropriated funds have been paid or will be paid, on or after December 22, 1989, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding, renewal, amending or modifying of any Federal contract, grant, or cooperative agreement. If any non-Federal funds are used for lobbying activities as described above, the Contractor shall submit Attachment C, Standard Form-LLL, "Disclosure Form to Report Lobbying" (attached hereto and made a part hereof), and shall file quarterly updates of any material changes. The Contractor shall require the language of this certification to be included in all subcontracts, and all subcontractor shall certify and disclose accordingly.

39. The Contractor and all subcontractors shall comply with the Copeland "AntiKickback" Act 18 USC § 874.
40. This Contract represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Contract, unless otherwise provided herein.
41. The Contractor hereby agrees that he has carefully examined the project site for which he shall provide services and has made investigations to fully satisfy himself that such site(s) is (are) correct and suitable for this work and he assumes full responsibility therefor. The provisions of this Contract shall control any inconsistent provisions contained in the Scope of Work which is attached hereto as Attachment A. The Scope of Work has been read and carefully considered by the Contractor, who understands the same and agrees to its sufficiency for the work to be done. Under no circumstances, conditions, or situations shall this Contract be more strongly construed against the County or Department than against the Contractor.
42. Any ambiguity or uncertainty in the specifications shall be interpreted and construed by the Department and County, and their decision shall be final and binding upon all parties.
43. The passing, approval, and/or acceptance by the Department and/or County of any of the services furnished by the Contractor shall not operate as a waiver by the Department and/or County of strict compliance with the terms of this Contract and Scope of Work. Failure on the part of the Contractor, immediately after Notice to Correct, shall entitle Department and/or County, to correct the same and recover the reasonable cost of such replacement and/or repair from the Contractor, who in any event shall be jointly and severally liable to the Department and County for all damage, loss, and expense caused to the Department and County by reason of the Contractor's breach of this Contract and/or its failure to comply strictly and in all things with this Contract and with the specifications.
44. The Contractor shall not pledge the Department's or County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.
45. If any term, covenant, condition or provision of this Contract (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Contract shall not be affected thereby; and each remaining term, covenant, condition and provision of this Contract shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Contract would prevent the accomplishment of the original intent of this Contract. The County, Department, and Contractor agree to reform this Contract to replace any stricken provision with a valid provisions that comes as close as possible to the intent of the stricken provision.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

The parties have caused this Contract to be duly executed, the day and year last written below.

OTAK GROUP, INC., a Florida corporation

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
OFFICE OF GREENWAYS AND TRAILS

By: _____
(Contractor's Authorized Signatory*)

By: *Samuel Brown*
Secretary or Designee for the State of Florida
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399

(Print Signatory's Name and Title)

Title: *Land Management Administrator*

(CORPORATE SEAL)

Date: _____

Date: *3-31-06*

Approved as to form and legality:

(Company Address)

Angela Helms
DEP Assistant General Counsel

(City, State and Zip Code)

MONROE COUNTY, FLORIDA
By its Board of County Commissioners

FEID No. _____

By: _____
* Mayor Charles (Sonny) McCoy
(OFFICIAL SEAL)

Contractor's Remittance Address:

Date: _____

(Address)

Approved as to form and legality:

(City, State and Zip Code)

County Attorney

*For contracts with governmental boards/commissions: If someone other than the Chairman signs this Contract, a resolution, statement or other document authorizing that person to sign the Contract on behalf of the Contractor must accompany the Contract.

List of attachments/exhibits included as part of this Contract:

Attachment	A	Scope of Work (6 Pages)
Attachment	B	Certification Regarding Debarments, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Federally Funded Transactions (2 Pages)
Attachment	C	Disclosure of Lobbying Activities (2 Pages)

ATTACHMENT A

Scope of Work

ARTICLE 1. THE WORK

- 1.1 The Contractor shall perform all the work required by the contract documents and provide for the proper execution and completion of the trail safety improvements on that portion of the Florida Keys Overseas Heritage Trail located on Stock Island, Big Coppitt Key and Big Pine Key.
- 1.2 All modifications pursuant to executed change orders processed as stipulated in the contract documents shall become part of the Contract. The original contract, the bid documents, all amendments thereto, and all change orders are hereinafter referred to as the "Contract."

ARTICLE 2. THE CONSULTANT

The Consultant for this project is WilsonMiller, Inc.

ARTICLE 3. TIME OF COMMENCEMENT AND COMPLETION AND LIQUIDATED DAMAGES

- 3.1 The work to be performed under this Contract shall commence upon notification within ten (10) calendar days after the date of the Department's Notice to Proceed, at which time the Contractor shall mobilize on site and proceed with construction. The Contractor shall execute the work with diligence and dispatch so as to maintain such schedules and milestones as established by the progress schedules. The work shall be substantially completed within two hundred forty (240) calendar days after the date of the Notice to Proceed and shall be finally completed within thirty (30) calendar days after the date of substantial completion.
- 3.2 Liquidated Damages For Failure to Complete On Time

Because failure to complete the project within the time fixed in Article 3.1 will result in substantial injury to the Department and to the County, and as damages arising from such failure cannot be calculated with any degree of certainty, the Contractor agrees that if the project is not substantially completed, according to the definition of "Substantial Completion" as contained in the specification terminology, unless a later time, is agreed to by the parties in accordance with the Contract, the Contractor shall pay to the Department and to the County liquidated damages for such delay, and not as a penalty, three hundred dollars (\$300.00) for each and every calendar day elapsing between the date fixed for substantial completion in Article 3.1 and the date such substantial completion shall have been accomplished. The Contractor also agrees that if this project is not finally completed, in accordance with the Contract the Contractor shall pay the Department and the County, as liquidated damages for such delay, and not as a penalty, one-half of the rate indicated above. Said liquidated damages, not to exceed twenty percent (20%) of the total cost of the project, shall be payable in addition to any excess expenses or costs payable by the Contractor to the Department and to the County under the provisions of Article 14 AIA Document A-201, and shall not exclude the recovery of damages by the Department and the County under the Contract except for Contractor's delays. The Department and the County shall each be entitled to receive fifty percent (50%) of all liquidated damages paid by the Contractor pursuant to this Article 3.2.

This provision for liquidated damages for delay shall not affect the Department's or the County's right to terminate the Contract. The Department's or the County's exercise of the right to terminate shall not release the Contractor from his obligation to pay said liquidated damages in the amount set out herein.

The Contractor further agrees that the County may deduct from the balance retained by the County under the Contract the liquidated damages stipulated herein or in Article 3.3, or such portion thereof as the said retained balance will cover.

3.3 Liquidated Damages When Department or County Terminates Contract

The Department and the County are entitled to completion of the project within the time fixed in Article 3.1 hereof or within such further time, if any, as may be allowed in accordance with the Contract. In the event of termination of the Contract by the Department or the County prior to completion as provided in Article 14.2 AIA Document A-201 or elsewhere in the Contract, the Contractor shall be liable to the Department and the County for the expenses for additional managerial and administrative services provided in said Article 14.2 and also for the per diem liquidated damages agreed upon in Article 3.2 hereof:

- (a) For each day the Contractor is arrears in his work at the time of said termination as determined by the Consultant; and
- (b) For each day of thirty (30) additional calendar days hereby stipulated and agreed to be the time it will require the Department and the County to effect another Contract for completion of the project and for resumption of work thereon.

Provided, however, that the sum as calculated under 3.3 (a) and (b), above, shall not exceed the number of days beyond the original agreed completion date, or any extension thereof as herein provided, reasonably required for completion of this project.

ARTICLE 4. CONTRACT SUM

The County shall pay the Contractor for the performance of the work, subject to additions and deduction by Change Order as provided in the contract documents, the sum of \$664,170.00 for the remainder construction repairs as bid

The Contract Sum is comprised of the base bid from bid number BD&C 13-05/06 for a total of \$664,170.00.

ARTICLE 5. PAYMENTS TO CONTRACTOR

5.1 Indemnification Rider

In addition to the Contract Sum, the County shall pay the Contractor ten dollars (\$10.00) for the Indemnification Rider prescribed in Section D-3 of the contract documents. Application for this payment shall be submitted to the County by the Contractor simultaneously with the Contractor's execution and delivery of the Contract to the County. Within forty-five (45) calendar days from the County's receipt of said Application, the County shall pay or cause to be paid to the Contractor said amount.

5.2 Progress Payments Against Contract Sum

Based upon Application for Payment submitted by the Contractor to the Consultant and Certificate of Payment issued by the Consultant and accepted by the Department, the County shall make progress payments to the Contractor in accordance with the following:

- 5.2.1 Upon receipt, review, and approval of the work, supporting documentation and the Certificate of Payment the County shall process partial payments up to ninety percent (90%) of that portion of the Contract Sum properly allocable to labor, materials, and subcontractors, less the aggregate of previous payments.

The Department shall have 30 days for inspection and approval of the work, and to receive supporting documentation, after receipt of the Certificate of Payment.

- (a) Upon receipt of payment from the County the Contractor shall promptly pay each subcontractor the amount to which said subcontractor is then entitled, less the percentage actually retained, by the County for such work, if any, from payments to the Contractor.

- (b) The Consultant or his agent may, upon request, at his or her discretion, furnish to a subcontractor, if practicable, information regarding the percentage the Contractor requested and the percentage allocated to the subcontractor by the Consultant.
- (c) Neither the Department, the County nor the Consultant shall have any obligation to pay or see to the payment of any monies to any subcontractor except as may otherwise be required by law.
- (d) No Certificate for Payment, whether partial or final, shall constitute an acceptance of any work not performed in accordance with the Contract.

5.3 Payments Withheld From Contract Sum

The Consultant may decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary, in his/her opinion, to protect the Department from loss resulting from:

- (a) Defective work not remedied;
- (b) Third party claims filed or reasonable evidence indicating probable filing of such claims;
- (c) Reasonable proof of failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;
- (d) Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum;
- (e) Damage to the Department or another Contractor;
- (f) Reasonable evidence that the work will not be completed within the time allowed in Article 3.1; or
- (g) Persistent failure to carry out the work in accordance with the Contract.

When the grounds for which payment was withheld are remedied by the Contractor payment shall be made for such amount.

ARTICLE 6. FINAL PAYMENT AGAINST CONTRACT SUM

The County shall process payment for the entire unpaid balance of the Contract Sum, less the amount of any sums which continue to be retained to satisfy the cost of performing any change in the work which is the subject of any claim or dispute and which has not yet been satisfactorily performed by the Contractor, provided that the parties have not otherwise stipulated in the Certificate of Substantial Completion, and provided further that the work has been satisfactorily completed, the Contractor's obligations under the Contract have been fully performed, the Contractor's lien waiver furnished and a final Certificate for Payment has been issued by the Consultant.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 Terms used in the Contract which are defined in the bid specifications shall have the meaning designated therein.
- 7.2 Harmony

The Contractor is advised and hereby agrees to exert every reasonable and diligent effort to assure that all labor employed by the Contractor and its subcontractors for work on the project shall work in harmony

with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the project. The Contractor further agrees that this provision will be included in all subcontracts of the Contractor. Provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or nonmembership in any labor union or labor organization, the right of any person to work as guaranteed by Article I, Section 6 of the Florida Constitution.

7.3 Apprentices

If the Contractor employs apprentices on the project, the behavior of the Contractor and the Department shall be governed by the provisions of Chapter 446, Florida Statutes, and by all applicable standards and policies governing apprentice programs and agreements established by the Division of Workforce Development of the State of Florida Department of Education. The Contractor shall include a provision similar to the foregoing sentence in each subcontract.

7.4 Contractor Representative

The Contractor represents and warrants that the information provided by the Contractor on Department's Form DBC 5085 "Experience Questionnaire and Contractor's Financial Statement," which was submitted by the Contractor to qualify for award of this Contract, and is hereby made a part of the Contract by reference, is true, accurate and correct. The Contractor understands and agrees that materially inaccurate information may result in immediate termination of this Contract at the Department's option.

7.5 Contractor's Work Force

The Contractor agrees to perform no less than fifteen percent (15%) of the project construction work utilizing its own employees. The percentage shall be calculated on the basis of the cost of materials and labor utilized by the prime Contractor's own forces to the original Contract Sum, and may exceed 15%.

7.6 Contractor's Supervision of Project

The Contractor shall provide, as a minimum, field (on site) supervision (through a named superintendent) of each of the general, concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing trades, either through the use of his employees, or in the instance of mechanical, plumbing and electrical trades through the use of employees of the subcontractor as shown in the Contractor's response to Bid No. BD&C 13-05/06 and the "Experience Questionnaire and Contractor's Financial Statement". The Contractor shall not change or deviate from these principal and supervisory personnel without the written consent of the Department.

ARTICLE 8. CLAIMS AND DISPUTES

8.1 Arbitration Provisions Deleted

The provisions for Arbitration conditions in AIA Document A-201, are hereby eliminated.

The purpose of deleting these provisions is to exclude in their entirety each portion of the cited provisions which relate to the arbitration of claims, so that the administrative remedy provided in Article 8.3 of this Contract shall be exclusive, in lieu of arbitration proceedings.

8.2 Delays: Changes In the Work

Article 8.3.3 of the AIA Document A201, General Conditions, is deleted and Contractor's remedies for delays in the progress of the work, or for changes in the work, shall be limited to those provided in this Article. The Contractor's exclusive remedy for delays in performance of the Contract caused by events beyond its control shall be a claim for equitable adjustment in the Contract period provided, however, inasmuch as the parties expressly agree that overhead costs incurred by the Contractor for delays in performing the work cannot be determined with any degree of certainty, it is hereby agreed that in the event the Contractor is delayed in the progress of the work after the Notice to Proceed to Mobilize of Site

and to Proceed With Construction for causes beyond its control and attributable only to acts or omissions of Department, the Contractor shall be entitled to compensation for overhead and profit costs either (a) as a fixed percentage of the actual cost of the change in the work, if the delay results from a change in the work, as calculated in Section D, Contractual Conditions in the bid specifications or (b) if the delay results from other than a change in the work, at an amount for each day of delay calculated by dividing an amount equal to two and one-half percent (2½%) of the original Contract Sum by the number of calendar days of the original Contract period.

In the event of a change in the work, Contractor's claim for adjustment in Contract Sum are limited exclusively to its actual costs for such changes plus fixed percentages for overhead, additional profit and bond costs, as specified in Section D, Contractual Conditions of the bid specifications.

No provision of this Contract shall be construed as a waiver of sovereign immunity by the Department or the County.

No provision of the contract documents makes or is intended to make provisions for recovery by Contractor of damages for delay or for breach of this Contract. All claims, disputes or controversies under this Contract shall be determined and settled provided in Article 8.3 of this Contract. No claim for breach of this Contract shall be submitted, determined, or settled under Article 8.3 of this Contract.

8.3 Disputes

Disputes shall be resolved as follows:

- 8.3.1 The parties shall make a good faith attempt to resolve disagreements which may arise from time to time by informal conference within ten (10) days of the date the matter requiring resolution arises.
- 8.3.2 In the event that the matter is not resolved at informal conference, the complaining party shall give written notice of dispute to the other party within five (5) days after the informal conference. The notice shall set out in detail all aspects of the matter to be resolved, including relief sought.
- 8.3.3 Within ten (10) days of receipt of the notice of dispute, the party shall deliver its detailed written response to the complaining party, and a formal conference shall be convened no later than thirty (30) days following the matter requiring resolution.
 - 8.3.3.1 All persons necessary to resolution of the matter shall attend the formal conference.
 - 8.3.3.2 Minutes of the formal conference shall be taken, transcribed, and signed off on by the Department and the County and shall be copied to the Contractor. Contractor shall send, in writing any dispute to the minutes within five (5) days.
- 8.34 In the event that the matter is not resolved at formal conference, if the parties agree in writing, the parties may choose to mediate the matter using a certified mediator, preferably one who is experienced with contract and construction law, agreed upon by both parties. The parties may choose binding or non-binding mediation. If binding mediation is chosen, the decision of the mediator shall be final and neither party may proceed to any other legal remedy. If mediation is chosen, the parties shall equally split the cost of the mediator, including any travel expenses he or she may incur.
- 8.35 In the event that the matter is not resolved at nonbinding mediation, complaining party shall within twenty-one (21) days file and serve an appropriate claim as prescribed by Chapter 120, Florida Statutes.
- 8.36 In no event shall a dispute arising under this Contract be part of any claim or count in a complaint filed in any court until all remedies afforded in Chapter 120, Florida Statutes, have been exhausted.
- 8.37 Venue for any formal claim and hearing or trial in any forum shall be Leon County, Florida.

8.38 The parties hereby waive the right to a jury trial on all issues that arise under this Contract.

8.4 Interest Provision Deleted

Article 13.6.1, AIA Document A-201 relating to interest, is deleted. Any monies not paid when due to either party under this Contract shall not bear interest except as may be required by Section 215.422(3)(b), Florida Statutes.

8.5 Contractor Insolvency and Neglect

Should the Contractor become insolvent, or at any time refuse or neglect to supply a sufficient number of properly skilled workers, or equipment and materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, the County shall be at liberty, after forty-eight (48) hours written notice to the Contractor, to provide any such labor, equipment, and materials and County shall deduct the cost thereof, from any money then due or thereafter to become due to the Contractor, under this Contract.

If such refusal, neglect, or failure is sufficient grounds for such action, the Department shall also be at liberty to terminate the employment of the Contractor. Consequently, the Department and the County may enter upon the premises to take possession, for the purpose of completing the work included under this Contract, of all materials, tools and appliances thereon and to employ any other person or persons to finish the work and provide the materials therefor. In case of such discontinuance of the employment, the Contractor shall not be entitled to receive any further payment under this Contract until the said work shall be wholly finished.

If the unpaid balance of the amount to be paid under this Contract shall exceed the expense incurred by the County in finishing the work, such excess shall be paid by the County to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the County. The expense incurred by the County, as herein provided, either for furnishing materials of finishing the work, and any damage incurred through such default, shall be chargeable to the Contractor.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Attachment B
CERTIFICATION REGARDING DEBARMENTS, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION-LOWER TIER FEDERALLY FUNDED TRANSACTIONS

Required for all contractors and subcontractors under

DEP CONTRACT NO.: DC641

1. The undersigned hereby certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. The undersigned also certifies that it and its principals:
 - (a) Have not within a three-year period preceding this response been convicted of or had a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - (b) Are not presently indicted by or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 2.(a) of this Certification; and
 - (c) Have not within a three-year period preceding this certification had one or more public transactions (Federal, State or local) terminated for cause or default.
3. Where the undersigned is unable to certify to any of the statements in this certification, an explanation shall be attached to this certification.

Dated this _____ day of _____, 2006.

By _____
Authorized Signature/Contractor

Typed Name/Title

Contractor's Firm Name

Street Address

Building, Suite Number

City/State/Zip Code

Area Code/Telephone Number

INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY, AND VOLUNTARY EXCLUSION-LOWER TIER FEDERALLY FUNDED
TRANSACTIONS

1. By signing and submitting this form, the certifying party is providing the certification set below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the certifying party knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Environmental Protection (DEP) or agencies with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The certifying party shall provide immediate written notice to the person to which this contract is Submitted if at any time the certifying party learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, Participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions of Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this contract is submitted for assistance in obtaining a copy of those regulations.
5. The certifying party agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into lower tier contract, or other covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DEP or agency with this transaction originated.
6. The certifying party further agrees by executing this contract that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier covered Transactions and in all solicitations for lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principles. Each participant may, but is not required to, check the Nonprocurement List (Telephone No. (202) 501-4740 or (202) 501-4873).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DEP or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

DEP FORM 11-043 (12/94)

Attachment C
DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/></p> <p style="margin-left: 20px;">a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance</p>	<p>2. Status of Federal Action</p> <p><input type="checkbox"/></p> <p style="margin-left: 20px;">a. bid/ offer/application b. initial award c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/></p> <p style="margin-left: 20px;">a. initial filing b. material change</p> <p style="margin-left: 20px;">For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:</p> <p style="margin-top: 20px;">Congressional District, if known:</p>		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p style="margin-top: 20px;">Congressional District, if known:</p>
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p style="margin-top: 20px;">CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p style="margin-top: 20px;">\$ _____</p>	
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</p> </div> <div style="width: 45%;"> <p>b. Individuals Performing Services (including address if different from No.10a) (last name, first name, MI):</p> </div> </div> <p style="text-align: center; margin-top: 20px;">(attach Continuation Sheet(s) SF-LLL, if necessary)</p>		
<p>11. Information requested through this form is authorized by Title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.</p>		<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>
<p>Federal Use Only: Authorized for Local Reproduction Standard Form-LLL (Rev 7-97)</p>		

Form DEP 55-221 (01/01)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of covered Federal action
3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by the reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the name of the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation to Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter the Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington D.C. 20503.